FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 451/2006

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATED : March 13, 2007.

Heard Shri A.C. Dharmadhikari for the appellants, and Shri Kshirsagar for the respondents.

The appellants are the original defendants. A suit was filed by the respondents/ plaintiffs against the appellants for possession of the suit property. According to the plaintiffs, the defendants were relatives of the plaintiffs and were staying in the suit property as licensee thereof. The defendant nos. 4 to 6, who were formal parties, by joint written statement, admitted the claim of the plaintiffs in its entirety. The defendant nos. 1 to 3, the present appellants, however, denied the claim of the plaintiffs and pleaded that they were the owners of the suit property. According to them, the house on the suit plot had fallen long back in the year 1965 and they had constructed the suit house thereon after the property was gifted to the defendant no.1 in the year 1965.

Both the Courts held that the plaintiffs have proved that they were the owners of the suit property. The Courts further held that the defendants failed to prove that the suit plot was orally gifted to the defendant no.1 by the original owner in or about the year 1965. The Courts then recorded a finding that the defendants had failed to prove their title by adverse possession. The Courts were also of the opinion that the licence also could not have been said to be irrevocable under the provisions of Section 60(b) of the Easement Act as the defendants had not executed the work of permanent character on the suit plot by acting upon the licence. For recording the aforesaid findings, the Courts took into consideration the pleadings of the defendants who had disputed that they were the licensee in suit premises and had, in fact, pleaded that they were the owners thereof. The Courts, therefore, held that the plea of the licence being irrevocable under Section 60(b) of the Easement Act was not available to the defendants as the defendants had disputed that they were the licensee of the property and had claimed the ownership.

The findings recorded by both the Courts are pure findings of facts and do not give rise to any substantial question of law. The second appeal is, therefore, dismissed with no order as to costs.

Though the second appeal is dismissed, on an oral prayer made by the counsel for the appellants, and considering the facts that the appellants are the close relatives of the respondents and had been in occupation of the suit property for more than 50 years, the appellants are permitted to occupy/retain in the premises for a period of six months from the date of this order, on their furnishing an undertaking before this Court within fifteen days from today, to the effect that they would peacefully vacate the suit premises on or before 13/9/2007.

Order accordingly.

JUDGE

RMP